



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0297; FRL-9930-28-Region 9

**Partial Approval and Partial Disapproval of Air Quality State
Implementation Plans; Arizona; Infrastructure Requirements for
Lead and Ozone**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Arizona to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead (Pb) and 2008 ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. We refer to such SIP revisions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs,

monitoring, and modeling necessary to assure attainment and maintenance of the standards.

DATES: This final rule is effective on [**Insert date 30 days from date of publication**].

ADDRESSES: EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2015-0297. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne, San Francisco, California. While all documents in the docket are listed in the index, some information may be publically available only at the hard copy location (e.g., copyrighted material) and some may not be publically available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947-4152, e-mail: buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

CAA section 110(a)(1) requires each state to submit to EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, an infrastructure SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) sets the content requirements of such a plan, which generally relate to the information and authorities, compliance assurances, procedural requirements, and control measures that constitute the "infrastructure" of a state's air quality management program. These infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.

- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment new source review (NSR)), and (ii) section 110(a)(2)(I),

pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

On November 12, 2008, the EPA issued a revised NAAQS for Pb.¹ This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On October 14, 2011, EPA issued "Guidance on Section 110 Infrastructure SIPs for the 2008 Pb NAAQS", referred to herein as EPA's 2011 Pb Guidance.² Depending on the timing of a given submittal, some states relied on the earlier draft version of this guidance, referred to herein as EPA's 2011 Draft Pb Guidance.³ EPA issued additional guidance on infrastructure SIPs on September 13, 2013.⁴

¹ 73 FR 66964 (November 12, 2008). The 1978 Pb standard (1.5 µg/m³ as a quarterly average) was modified to a rolling 3 month average not to be exceeded of 0.15 µg/m³. EPA also revised the secondary NAAQS to 0.15 µg/m³ and made it identical to the revised primary standard. Id.

² See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10 (October 14, 2011).

³ "DRAFT Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," June 17, 2011 version.

⁴ See Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1-10, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (referred to herein as "2013 Infrastructure SIP Guidance").

On March 27, 2008, EPA issued a revised NAAQS for 8-hour Ozone.⁵ This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. EPA did not, however, prepare guidance at this time for states in submitting I-SIP revisions for the 2008 Ozone NAAQS.⁶ On September 13, 2013, EPA issued "Guidance of Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," which provides advice on the development of infrastructure SIPs for the 2008 ozone NAAQS (among other pollutants) as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.⁷

The Arizona Department of Environmental Quality (ADEQ) has submitted infrastructure SIP revisions pursuant to EPA's promulgation of the NAAQS addressed by this rule, including the following:

- October 14, 2011 - "Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); 2008 Lead NAAQS," to address all of the CAA section 110(a)(2) requirements, except for section

⁵ 73 FR 16436 (March 27, 2008).

⁶ Preparation of guidance for the 2008 Ozone NAAQS was postponed given EPA's reconsideration of the standard. See 78 FR 34183 (June 6, 2013).

⁷ See Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1-10, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (referred to herein as "2013 Infrastructure SIP Guidance").

110(a)(2)(G),⁸ for the 2008 Pb NAAQS (2011 Pb I-SIP Submittal).

- December 27, 2012 - "Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2); 2008 8-hour Ozone NAAQS," to address all of the CAA section 110(a)(2) requirements for the 2008 8-hour Ozone NAAQS (2012 Ozone I-SIP Submittal).

On February 19, 2015 EPA approved elements of the above submittals with respect to the 2008 Pb and 2008 8-hour ozone NAAQS infrastructure requirements in CAA sections 110(a)(2)(A), (B), (E), (F), (G), (H), (L) and (M).⁹ That action also explained that we would separately act on the permitting infrastructure SIP elements in CAA sections 110(a)(2)(C), (D), (J), and (K) in a subsequent rulemaking. These permit related elements are the subject of today's final rule.

In addition to the above 2011 and 2012 infrastructure SIP submittals, ADEQ submitted "New Source Review State Implementation Plan Submission" on October 29, 2012, and

⁸ In a separate rulemaking, EPA fully approved Arizona's SIP to address the requirements regarding air pollution emergency episodes in CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS. 77 FR 62452 (October 15, 2012). Although ADEQ did not submit an analysis of Section 110(a)(2)(G) requirements, we discuss them in our technical support document (TSD), which is in the docket for this rulemaking.

⁹ "Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS)" was signed on February 19, 2015 but, as of June 29, 2015, has not yet published in the Federal Register. This action was proposed in the Federal Register on November 24, 2014 (79 FR 69796).

"Supplemental Information to 2012 New Source Review State Implementation Plan Submission" on July 2, 2014 (NSR Submittals). In addition to addressing revisions to Arizona's NSR program, these submissions also relate to our analysis of infrastructure SIP elements in CAA sections 110(a)(2)(C), (D), (J), and (K).

II. Proposed Action

On May 12, 2015 (80 FR 27127), EPA proposed to partially approve and partially disapprove Arizona's 2011 Pb I-SIP Submittal and 2012 Ozone I-SIP Submittal with respect to the permitting infrastructure SIP elements in CAA sections 110(a)(2)(C), (D), (J), and (K). Our proposed action and associated technical support document (TSD) provide detailed discussion of Arizona's demonstration for each element. Generally, we proposed a partial approval because the submittals show that Arizona largely fulfills the relevant infrastructure requirements. But we proposed a simultaneous partial disapproval because of these deficiencies:

- With respect to §110(a)(2)(C), EPA proposed to: (1) disapprove the 2011 Pb and 2012 Ozone Infrastructure SIPs for ADEQ and Pinal County because the SIP-approved PSD programs lack certain "structural" PSD program elements as identified in our TSD; and (2) disapprove both Infrastructure SIPs for Maricopa

and Pima counties, which do not have SIP approved PSD programs.

- With respect to the third prong of §110(a)(D)(i), EPA proposed to disapprove both Infrastructure SIPs regarding “structural” PSD requirements under §110(a)(2)(C).
- With respect to §110(a)(2)(D)(ii), EPA proposed to disapprove both Infrastructure SIPs with respect to Maricopa County and Pima County, which do not have SIP approved PSD programs.
- With respect to §110(a)(2)(J), we proposed to disapprove both Arizona Infrastructure SIPs for failure to fully satisfy the requirements of part C relating to PSD.
- With respect to §110(a)(2)(K), we proposed to disapprove both Infrastructure SIPs because ADEQ, Pinal, Pima, and Maricopa counties have not submitted adequate provisions or a narrative that explain how existing state and county law satisfy the requirements of 110(a)(2)(K).

III. Public Comments and EPA Responses

The public comment period on EPA’s proposed rule opened on May 12, 2015, the date of its publication in the **Federal Register** at 80 FR 27127, and closed on June 11, 2015. During this period, EPA did not receive any comments. Therefore, EPA is finalizing our action as proposed.

IV. Final Action

Under CAA section 110(k) (3) and based on the evaluation and rationale presented in the proposed rule, the TSD and this final rule, EPA is partially approving the 2011 Pb I-SIP Submittal and the 2012 Ozone I-SIP Submittal with respect to the following infrastructure SIP requirements:

- Section 110(a) (2) (C) (in part): Program of enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a) (2) (D) (i) (in part): Interstate pollution transport.
- Section 110(a) (2) (D) (ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a) (2) (J) (in part): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a) (2) (K): Air quality modeling and submission of modeling data.

EPA is simultaneously partially disapproving the submittals because of deficiencies described in our proposed rule and TSD and summarized in the proposed rule section above. For all I-SIP elements that do not meet the CAA §110(a) (2) requirements there are existing FIPs in place, with the exception of the modeling requirements under CAA §110(a) (2) (K) for Pinal County and ADEQ. To the extent our proposed approval or proposed disapproval of

an I-SIP element relied on our March 18, 2015 proposed action on ADEQ's NSR SIP submittal, our final action on the I-SIP elements identified in this notice relies on our final action on ADEQ's NSR SIP submittal, signed contemporaneously primarily in the form of a limited approval/limited disapproval.¹⁰ Furthermore, the partial disapprovals in this action do not result in sanctions under section 179 of the Act because infrastructure SIPs are not required under Title I, Part D of the Act.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule

¹⁰ EPA's action on ADEQ's NSR SIP submittal was largely finalized as proposed, with the exception of certain changes in response to public comments. These changes resulted in our finding fewer bases for disapproval as compared with our proposed action on ADEQ's NSR SIP submittal and do not affect today's final action on Arizona's I-SIP submittals.

subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP partial approvals/partial disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because EPA's approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875

(Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities

among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and

will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and

applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective [insert date 30 days from date of publication of this document in the Federal Register].

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone,
Lead, Reporting and recordkeeping requirements.

Dated: June 29, 2015.

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart D - Arizona

2. Section 52.123 is amended by adding paragraphs (o) and (p) to read as follows:

§ 52.123 Approval status.

* * * * *

(o) *2008 8-hour ozone NAAQS:* The SIPs submitted on October 14, 2011 and December 27, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), (J) and (K) for all portions of the Arizona SIP.

(p) *2008 Lead (Pb) NAAQS:* The SIPs submitted on October 14, 2011 and December 27, 2012 are fully or partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), (J) and (K) for all portions of the Arizona SIP.

[FR Doc. 2015-17057 Filed: 7/13/2015 08:45 am; Publication Date: 7/14/2015]